



**Billing Code: 4510.43-P**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**Petitions for Modification of Application of Existing Mandatory Safety Standards**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

**DATES:** All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before [Insert date 30 days from the date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit your comments, identified by “docket number” on the subject line, by any of the following methods:

1. Electronic Mail: [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov). Include the docket number of the petition in the subject line of the message.

2. Facsimile: 202-693-9441.

3. Regular Mail: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances.

4. Hand-Delivery or Courier: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. Individuals who submit comments by hand-delivery are required to check in at the receptionist's desk on the 21<sup>st</sup> floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

**FOR FURTHER INFORMATION CONTACT:** Barbara Barron, Office of Standards, Regulations, and Variances at 202-693-9447 (Voice), [barron.barbara@dol.gov](mailto:barron.barbara@dol.gov) (E-mail), or 202-693-9441 (Facsimile). [These are not toll-free numbers].

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

## **II. Petitions for Modification**

Docket Number: M-2011-012-M.

Petitioner: Celite Corporation, 2500 Miguelito Road, Lompoc, California 93436.

Mine: Lompoc Plant, MSHA I.D. No. 04-02848, 2500 Miguelito Road, Lompoc, California 93436, located in Santa Barbara County, California.

Regulation Affected: 30 CFR 56.20001 (Intoxicating beverages and narcotics).

Modification Request: The petitioner requests a modification of the existing standard to permit alcohol slow-fermented from starch, bearing an alcohol content of less than 10 percent alcohol by volume (ABV), commonly called “beer,” to be used at the Lompoc Plant for chemical testing that is part of product quality control and research. The petitioner proposes to store containers of beer at the Lompoc Plant in secure locations with restricted access, and use logs, records, and markings to ensure the beer will be used solely for purposes of quality control testing, statistical method control testing, and research testing. The petitioner states that:

- (1) It does not seek a modification of any other part of the standard.
- (2) The consumption of any intoxicating beverages and narcotics, including beer, will be prohibited and persons under the influence of alcohol or narcotics will not be permitted on site.
- (3) The Lompoc Mine is a surface diatomaceous earth (DE) mine and processing facility. Mined DE is processed to create finished DE products (the marketable products).
- (4) One of the commercial applications of the marketable products is a filtration agent utilized during the brewing process for beer. The marketable products are integrated onto a fine mesh screen, with other ingredients, thereby creating a “filter-cake.” At the end of the brewing process, following fermentation that results in the creation of the alcohol-containing liquid that is called “beer,” the beer is passed through the filter-cake to remove undesirable contaminants that results in higher clarity of the beer, which is commercially desirable.
- (5) Mining operations at Celite Corporation require that containers of beer less than 10 percent ABV be located at the Lompoc Plant to conduct quality control testing of the marketable products, and to perform research testing to ensure that the marketable products are suitable for use in beer brewing. Celite Corporation’s commercial operations also require that beer be located at the Lompoc Plant’s Research Laboratory (Research Lab) so that the company’s research staff may continue to create new marketable products and modify existing marketable products.

(6) Although DE can be an excellent filtration aid in the production of beer, it also contains naturally occurring iron, which is undesirable in beer production. If the beer absorbs too much iron, the beer will develop a bitter taste, which is not commercially desirable. Soluble iron in beer also has a deleterious effect on beer stability, which is also not commercially desirable. Accordingly, one of the most critical properties of the marketable products is its beer-soluble iron (BSI) content.

(7) To ensure that the marketable products meet the BSI and other applicable specifications, Celite must engage in testing on-site at the Lompoc Plant to identify the BSI content of the DE products as they are processed.

(8) Specifications for BSI in the marketable products are measured at the parts per million level. Celite warrants maximum BSI content in marketable products sold to the beer industry. To adequately control the production of marketable products, and release marketable products within customers' specifications, it is essential to conduct in-process, finished product, and research testing of the marketable products.

(9) The number of actual BSI tests conducted at the Lompoc Plant can range from 5 to 40 per day. This testing methodology conforms to recommendations of the American Society of Brewing Chemists.

(10) Celite Corporation's research scientists continue to analyze and develop new and modified marketable products for use in beer production. Since beer industry customers are among Celite's largest, Celite's research scientists need to keep customer products on-site in the Research Lab for use in developmental research. Work routinely

requiring the use of beer in the Research Lab includes DE permeability analysis, beer stability analysis, and solubility of other trace elements in DE that may have deleterious effect on beer quality.

(11) Because this on-site testing and research activity require that beer be stored and used at the Lompoc Plant, which is prohibited by 30 CFR 56.20001, there is a need for this petition.

(12) The use of intoxicating beverages and narcotics is not tolerated at the Lompoc Plant or at any other mine operated by Celite. However, for commercial purposes, Celite requires that containers of beer be stored at the Lompoc Plant so that appropriate quality control and research testing can be conducted. Celite seeks to modify the existing standard for the following reasons:

(a) To store containers of beer at the Lompoc Plant in secure locations.

(b) To use beer at the Lompoc Plant for purposes of quality control testing, statistical method control testing, and research testing.

(13) Celite believes that these modifications may be accomplished in a manner that ensures that miners do not have access to the beer used for testing purposes, thereby, ensuring that miners cannot consume the beer. The petitioner proposes the following alternative method of compliance:

(a) Beer used in laboratory procedures will be ordered by the Quality Specialist, Research Technician, or other responsible designee, from the purchasing coordinator.

(b) The purchasing coordinator or other responsible designee will arrange for the supply of beer to be purchased and delivered to the appropriate person/department for receipt. Beer may be received directly from a customer that requires testing in their specific beer.

(c) When the beer is received, the amount will be recorded on a log or other equivalent form.

(d) Prior to storage, the containers of beer will be initialed or marked across the label with a permanent marker to easily identify containers purchased or received for testing purposes.

(e) Except during testing procedures, the beer will be stored in a locked steel cabinet. The key will be kept by the Quality Assurance Supervisor, Research Technician, or other designee(s). A copy of the key to the locking steel cabinet will be kept by the Quality Manager, Research Manager, or other responsible person designated by the operator.

(f) A record of beer use will be kept on the log or equivalent form. The record will include the amount of beer and date used and the initials of the person acquiring the beer for testing.

(g) When the testing has concluded, the remaining degassed beer will be disposed of by dumping it down a sink drain or by other appropriate means.

(h) Empty containers of beer will be kept in a locked steel cabinet or designated receptacle until they are disposed of properly.

The petitioner asserts that the proposed alternative method is consistent with the goals of the Mine Act by providing an equivalent level of protection for the miners as provided by the existing standard, and will allow the Celite Corporation to maintain the commercial viability of the products that are mined at the Lompoc Plant.

Docket Number: M-2011-013-M.

Petitioner: Dicalite Minerals Corporation, 36994 Summit Lake Road, Burney, CA 96013.

Mine: Dicalite Plant, MSHA I.D. No. 04-04053, 36994 Summit Lake Road, Burney, CA 96013, located in Shasta County, California.

Regulation Affected: 30 CFR 56.20001 (Intoxicating beverages and narcotics).

Modification Request: The petitioner requests a modification of the existing standard to permit alcohol slow-fermented from starch, bearing an alcohol content of less than 10 percent alcohol by volume (ABV), commonly called “beer”, to be used at the Dicalite Plant for chemical testing that is part of product quality control and research. The petitioner proposes to store containers of beer at the Dicalite Plant in secure locations with restricted access, and use logs, records, and markings to ensure the beer will be used solely for purposes of quality control testing, statistical method control testing, and research testing. The petitioner states that:

- (1) It does not seek a modification of any other part of the standard.



(2) The consumption of any intoxicating beverages and narcotics, including beer, will be prohibited and persons under the influence of alcohol or narcotics will not be permitted on site.

(3) The Dicalite Plant is a surface diatomaceous earth (DE) mine and processing facility. Mined DE is processed to create finished DE products (the marketable products).

(4) One of the commercial applications of the marketable products is a filtration agent utilized during the brewing process for beer. The marketable products are integrated onto a fine mesh screen with other ingredients, thereby creating a “filter-cake.” At end of the brewing process, following fermentation that results in the creation of the alcohol-containing liquid that is called “beer,” the beer is passed through the filter-cake to remove undesirable contaminants. This results in higher clarity of the beer, which is commercially desirable.

(5) Mining operations at Dicalite Minerals Corporation require that containers of beer less than 10 percent ABV be located at the Dicalite Plant to conduct quality control testing of the marketable products and perform research testing to ensure that the marketable products are suitable for use in beer brewing. Beer industry customers are at the core of Dicalite’s business.

(6) Although DE can be an excellent filtration aid in the production of beer, it also contains naturally occurring iron, which is undesirable in beer production. If the beer absorbs too much iron, the beer will develop a bitter taste, which is not

commercially desirable. Soluble iron in beer also has a deleterious effect on beer stability, which is also not commercially desirable. Accordingly, one of the most critical properties of the marketable products is its beer-soluble iron (BSI) content.

(7) To ensure that the marketable products meet the BSI and other applicable specifications, Dicalite will engage in testing on-site at the Dicalite Plant to identify the BSI content of the DE products as they are processed.

(8) Specifications for BSI in the marketable products are measured at the parts per million level. Dicalite warrants maximum BSI content in marketable products sold to the beer industry. To adequately control the production of marketable products and release marketable products within customers' specifications, it is essential to conduct in-process, finished product, and research testing of the marketable products.

(9) The number of actual BSI tests conducted at the Dicalite Plant can range from 5 to 30 per day. This testing methodology conforms to recommendations of the American Society of Brewing Chemists.

(10) The purpose of the existing standard is to protect miners by ensuring that the miners do not have access to intoxicating beverages and narcotics at mines, and that miners are not under the influence of intoxicating beverages and narcotics while on the job. The use of intoxicating beverages and narcotics is not tolerated at the Dicalite Plant. However, for commercial purposes, Dicalite requires that containers of beer be stored at the Dicalite Plant so that appropriate quality control and research testing can be conducted. The petitioner proposes to:

(a) Store closed containers of beer at the Dicalite Plant in secure locations with restricted access.

(b) Use beer at the Dicalite Plant only for purposes of quality control testing, statistical method control testing, and research testing.

(c) Store open containers of beer in a manner that ensures that miners do not have access to the beer used for testing purposes.

(11) The petitioner believes that the modifications sought through the petition may be accomplished in a manner that ensures that miners do not have access to the beer used for testing purposes. The petitioner proposes the following alternative method of compliance:

(a) Beer used in laboratory procedures will be ordered by the lab technician or other responsible designee, who will arrange for the supply of beer to be purchased and delivered to the appropriate person/department for receipt.

(b) When the beer is received, the amount will be recorded on a log or other equivalent form.

(c) The beer bottles will be initialed or marked in some way across the label with permanent marker prior to storage, to easily identify containers purchased for testing purposes.

(d) Beer will be stored in a steel locking cabinet. The key will be kept by the lab technician or other designee(s). A copy of the key to the locking cabinet will be kept by the Quality Manager or other responsible person.

(e) A record of use will be kept on the log or equivalent form that includes the amount, date used, and initials of the person acquiring the beer for testing purposes.

(f) When testing has concluded, the remaining degassed beer will be disposed of by dumping it down the drain or other appropriate disposal means.

(g) Empty containers of beer will be kept in a locking cabinet/or designated receptacle until disposed of properly.

The petitioner asserts that the proposed alternative method is consistent with the goals of the Mine Act by providing an equivalent level of protection for the miners as is provided by the existing standard, and will allow the Dicalite Minerals Corporation to maintain the commercial viability of the products that are mined at the Dicalite Plant.

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Patricia W. Silvey  
Certifying Officer

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